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Country-of-Origin Labeling for Foods

Geoffrey S. Becker
Specialist in Agricultural Policy
Resources, Science, and Industry Division

Summary

Federal law requires most imports, including many food items, to bear labels informing the "ultimate purchaser" of their country of origin. Various raw agricultural products generally were exempt. The 2002 farm bill (P.L. 107-171) requires many retailers to provide, starting September 30, 2004, country-of-origin labeling (COOL) on fresh fruits and vegetables, red meats, seafood, and peanuts. The program is voluntary until then. Some food industry groups are seeking repeal of the mandate (at least for meats), arguing that it is flawed. Proponents maintain that its benefits to producers and consumers will far exceed any costs. This report will be updated if events warrant.

Background

Tariff Act Provisions. Under §304 of the Tariff Act of 1930 as amended (19 U.S.C. 1304), every imported item must be conspicuously and indelibly marked in English to indicate to the "ultimate purchaser" its country of origin. The U.S. Customs Service, which administers and enforces this requirement, generally defines the "ultimate purchaser" as the last U.S. person who will receive the article in the form in which it was imported. So, if articles arriving at the U.S. border in retail-ready packages — including food products, e.g., a can of Danish ham, a slab of Dutch cheese, or a box of English candy — each must carry such a mark. However, if the article is destined for a U.S. processor where it will undergo "substantial transformation" (as determined by Customs), then that processor or manufacturer is considered the ultimate purchaser.

The law authorizes exceptions to the labeling requirements, such as articles incapable of being marked or where the cost would be "economically prohibitive." One important set of exceptions has been the "J List," so named for §1304(a)(3)(J) of the statute, which empowered the Secretary of the Treasury (where Customs was located until it was moved to the Department of Homeland Security) to exempt classes of items that were "imported in substantial quantities during the five-year period immediately preceding January 1, 1937, and were not required during such period to be marked to indicate their origin."

Among the items placed on the J List were specified agricultural products including "natural products, such as vegetables, fruits, nuts, berries, and live or dead animals, fish and birds; all the foregoing which are in their natural state or not advanced in any manner further than is necessary for their safe transportation." (See 19 C.F.R. 134.33.) Although J List items themselves have been exempt from the labeling requirements, §304 of the 1930 Act has required that their "immediate containers" have country-of-origin labels. For example, when Mexican tomatoes or Chilean grapes are sold loosely from a store bin, country labeling has not been required. However, if those tomatoes or grapes are wrapped in cellophane or otherwise packaged, the label has been required.

Meat and Poultry Inspection Provisions. USDA's Food Safety and Inspection Service (FSIS) is responsible for ensuring the safety and proper labeling of most meat and poultry products, including imports, under the Federal Meat Inspection Act as amended (21 U.S.C. 601 *et seq*.) and the Poultry Products Inspection Act as amended (21 U.S.C. 451 *et seq*.). Regulations issued under these laws have required that the country of origin appear in English on the immediate containers of all meat and poultry products entering the United States (9 C.F.R. 327.14 and 9 C.F.R. 381.205, respectively). Only plants in countries certified by USDA to have inspection systems equivalent to those of the United States are eligible to export products to the United States.

All individual, retail-ready packages of imported meat products (for example, canned hams or packages of salami) have had to carry such labeling. Imported bulk products, such as carcasses, carcass parts, or large containers of meat or poultry destined for U.S. plants for further processing also have had to bear country-of-origin marks. However, once these non-retail items enter the country the federal meat inspection law deems them to be domestic products. When they are further processed in a domestic, USDA-inspected, meat or poultry establishment — which has been considered the ultimate purchaser for purposes of country-of-origin labeling — USDA no longer required such labeling on either the new product or its container. USDA has considered even minimal processing, such as cutting a larger piece of meat into smaller pieces or grinding it for hamburger, enough of a transformation so that country markings are no longer necessary.

Although country-of-origin labeling has not been *required* by USDA after an import leaves the U.S. processing plant, the Department (which must *pre*approve *all* meat labels) has had the discretion to *permit* labels to cite the country of origin, if the processor requested it. This has included labels citing the United States as the country of origin.

Meat and poultry product imports must comply not only with the meat and poultry inspection laws and rules, but also with the Tariff Act labeling regulations. Because Customs generally requires that imports undergo more extensive changes (i.e., "substantial transformation") than required by USDA to avoid the need for labeling, there has been a potential for conflict between the two requirements, Administration officials acknowledge.

Legislation in the 107th Congress

Various bills were introduced into the 107th Congress to impose more prescriptive country-of-origin requirements on a variety of food products. In response, the House-passed farm bill (H.R. 2646) included language requiring retail-level COOL for fresh produce. The Senate version also extended coverage to red meats, peanuts, and seafood. Title X, §10816, of the final farm law, signed May 13, 2002 (P.L. 107-171, the Farm

Security and Rural Investment Act of 2002), amends the Agricultural Marketing Act of 1946 to:[1]

- Cover ground and muscle cuts of beef, lamb and pork, farm-raised and wild fish and shellfish, peanuts, and "perishable agricultural commodities," i.e., fresh and fresh frozen fruits and vegetables;
- Exempt these products if they are ingredients of processed foods;
- Require retailers (specifically, food stores that sell at least $230,000 annually in fruits and vegetables as defined by the Perishable Agricultural Commodities Act) to inform consumers of these products' origin "by means of a label, stamp, mark, placard, or other clear and visible sign on the covered commodity or on the package, display, holding unit, or bin containing the commodity at the final point of sale to consumers;"
- Exempt "food service establishments," such as restaurants, cafeterias, bars, and similar facilities that prepare and sell foods to the public;
- Require USDA to issue, by September 30, 2002, voluntary guidelines for labeling, with mandatory labeling to begin on September 30, 2004;
- Provide guidance for recordkeeping and USDA enforcement.

Implementation and Selected Issues

USDA's Agricultural Marketing Service (AMS), which is implementing the new law, published guidelines for the voluntary phase in the October 11, 2002 *Federal Register*.[2] (Few if any retailers have opted for voluntary compliance.) AMS also is developing proposed rules, expected to be published this fall, for the mandatory phase. Implementation has sparked renewed debate over a number of policy issues. Much of the controversy has focused on what the meat industry would have to do to comply.

Farm Economic Impacts. Some believe that COOL will provide U.S.-raised products with a competitive advantage over foreign products because, they argue, U.S. consumers, if offered a clearer choice, would choose fresh foods of domestic origin, strengthening demand for, and prices, of the latter. Many domestic fruit and vegetable growers, for example, believe that the quality of foreign produce can be inferior to theirs, and the two should be clearly differentiated. However, a USDA study for beef and lamb found no "direct or empirical evidence" that U.S. meats would gain a large or long-term price advantage from new country labeling rules.[3] Some critics have noted, if industry (including on-farm) compliance costs (see below) prove to be high, they could outweigh any potential benefits — particularly for beef, lamb, and pork producers competing with poultry, whose products are not subject to COOL. Another concern is that if COOL rules

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[1] Deleted in conference was Senate language to ban the use of USDA quality grade labels on imported carcasses and meat products. Currently, both domestic and imported meats and meat products are eligible to receive USDA quality grades as a fee-based service.

[2] AMS maintains an extensive website on COOL at [http://www.ams.usda.gov/cool/].

[3] *Mandatory Country of Origin Labeling of Imported Fresh Muscle Cuts of Beef and Lamb*, January 2000. The National Cattlemen's Beef Association (NCBA), in its April-May 2002 *National Cattlemen* magazine, argued that as much as 70% of imported beef may never be labeled under the new law. Such imports are used mainly in food service and processed foods, which are exempted by the law, NCBA observed.

are not simplified (particularly with regard to origin designations; see below) they might encourage a food company to conduct all production and processing off-shore in a single country to avoid labeling complications.[4]

Defining "Origin." To claim a product is entirely of U.S. origin, these criteria must be met: for beef, lamb, and pork, and for farm-raised fish and shellfish, the product must be derived exclusively from animals born (for fish and shellfish, hatched), raised, and slaughtered (processed) in the United States; wild fish and shellfish must be derived exclusively from those either harvested in U.S. waters or by a U.S. flagged vessel, and processed in the United States or on a U.S. vessel (wild and farm-raised seafood must be differentiated); fresh and frozen fruits and vegetables and peanuts must be exclusively from products grown, packed, and if applicable, processed in the United States. These definitions generally are in the statute and further interpreted by the AMS guidelines.

Difficulties arise when products — particularly meats — are produced in multiple countries. For example, beef may be from an animal that was born in the United States, fed in Canada, and then reimported for processing — now increasingly common, as the two countries become more dependent on each's economic strengths in those production phases. All such information would have to be noted at the retail level. Likewise, products from several different countries often are mixed, such as ground beef, or pre-cut and mixed salad greens. In such cases, the label would have to list all the countries of origin in order of predominance.

Recordkeeping and Verification. The law states that the Secretary "may require that any person that prepares, stores, handles, or distributes a covered commodity for retail sale maintain a verifiable recordkeeping audit trail that will permit the Secretary to verify compliance..." In a possible precursor to the mandatory rules, the USDA guidelines include this as a requirement. Although various types of documentation are acceptable, "self-certification...is not sufficient," the guidelines state. At the same time, the law explicitly prohibits USDA from using a mandatory identification system.

This aspect of the program may be among the most controversial, because of the potential complications and costs to affected industries of tracking the identity of each animal (or plant) from birth (harvest) through retail sale. Producers and processors may have to segregate these relatively "fungible" (i.e., interchangeable) commodities when they come from different sources. Failure to maintain a documented chain of custody could result in the product being forced off retail markets and into either export or restaurant outlets. Program proponents do not agree that record-keeping difficulties will be as difficult as critics contend. Modern production methods already incorporate many aspects of individual animal tracking for purposes of improved nutrition, animal health, and so forth, providing opportunities for rules that are minimally burdensome.[5] Some COOL supporters have charged that the Administration deliberately is seeking to promulgate overly complicated, costly rules in order to discredit mandatory COOL, which it opposes.

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[4] Pasco, Richard. "Country of Origin Labeling Not So Cool for Some," *Agricultural Law Letter*, December 2002 at [http://www.agriculturelaw.com/dec2002.html].

[5] Many industry analysts believe that individual animal identification will be in place in the United States in the near future, but more likely necessitated by animal health. See also CRS Report RL32012, *Animal Identification and Meat Traceability*.

Implementation Costs. AMS published, in the November 21, 2002, *Federal Register*, an estimate that the recordkeeping cost for the industry might be $1.968 billion in the first year. This preliminary estimate, for which AMS sought public comments, was based on a projection of time requirements for 2 million farm and fish producers costing $1 billion, plus 100,000 handlers (processors, distributors, importers, etc.) costing $340 million, plus 31,000 retailers costing $628 million. Mandatory COOL critics view these estimates as evidence of the huge burden industry is facing; some of them have developed estimates that are far higher. COOL supporters disagree, calling the estimates grossly exaggerated. A study published by the University of Florida asserts that the AMS estimate is excessively high. The Florida study provides an alternative analysis suggesting first-year recordkeeping costs of between $70 million and $193 million — which are substantially outweighed by the benefits, including consumers wanting country of origin information, and willing to pay for it.[6]

A recent report by the General Accounting Office (GAO) concludes that USDA's cost estimate assumptions are "questionable and not well supported." For example, GAO said, USDA assumed that all recordkeeping would be a new burden, but in fact some of the required information already is maintained by affected parties. Also, GAO said that USDA may have overstated the number of businesses affected and the hourly recordkeeping costs. On the other hand, the USDA estimate did not include such industry costs as segregating and storing foods and for actual labeling, and such federal costs as oversight and enforcement – which likely will all be part of the cost-benefit analysis to accompany the proposed rules for the mandatory program.[7]

Trade. Supporters of the new law argue that it is unfair to exempt fruits, vegetables, and meats from some country labeling requirements when almost all other imported consumer products, from automobiles to most other foods, must comply. Furthermore, they note that many foreign countries already impose their own country-of-origin labeling, at retail and/or import sites, for various perishable agricultural commodities, which USDA's Foreign Agricultural Service (FAS) documented in a 1998 survey.[8] Critics counter that country-of-origin labeling is a thinly disguised trade barrier deliberately intended to increase costs for importers and to foster the unfounded perception that foreign products are inherently less safe (or of lower quality) than U.S. products. The law will undermine U.S. efforts to break down other countries' trade barriers and to expand international markets for U.S. products, critics contend. They add that several countries are likely to challenge the provision as a violation of existing U.S. trade obligations.

Consumer Choice and Food Safety. Proponents of the new program have long argued that U.S. consumers have a right to know the origin of their food, particularly during a period when food imports are increasing. Such information is particularly important to consumers whenever specific health and safety problems arise that may be

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[6] VanSickle, McEowen, Taylor, Harl, and Connor. *Country of Origin Labeling: A Legal and Economic Analysis*. International Agricultural Trade and Policy Center, University of Florida. May 2003. [http://www.iatpc.fred.ifas.ufl.edu/docs/policy_brief/PBTC_03-5.pdf].

[7] GAO. *Country-of-Origin Labeling: Opportunities for USDA and Industry to Implement Challenging Aspects of the New Law*. GAO-03-780. August 2003.

[8] FAS. *1998 Foreign Country of Origin Labeling Survey*. February 4, 1998. The recent GAO report updates this information for 57 countries accounting for most U.S. agricultural trade.

linked to imported foods, proponents add. They cite as one prominent example concerns about the safety of some foreign beef due to outbreaks of bovine spongiform encephalopathy (BSE, or "mad cow disease"). In May 2003, the discovery of a single cow with BSE in Canada prompted U.S. officials to impose a ban on all Canadian ruminant and ruminant product imports (portions of which are now being lifted). Complicating matters has been a demand by Japan for verification that all imports of U.S. beef come from animals born, raised, and slaughtered in the United States. These developments have been used by some COOL supporters to argue the need for country labeling.[9]

Critics (and some proponents) of COOL assert that such labeling does not increase public health by telling consumers which foods are safer than others: all food imports already must meet equivalent U.S. safety standards, which are enforced vigorously by U.S. officials at the border and overseas. In fact, they note, several serious outbreaks of food borne illness in recent years have been linked to contaminants in perishable agricultural commodities produced *in* the United States, including the bacteria *e. coli* 0157:H7 and *salmonella*. Scientific principles, not geography, must be the arbiter of safety, they add.

Recent Congressional Response

Some industry groups, including NCBA, the Food Marketing Institute, the National Pork Producers Council, and the American Meat Institute, oppose mandatory COOL on the grounds that it is deeply flawed. Others, including the American Farm Bureau Federation, National Farmers Union, R-CALF USA, and Consumer Federation of America, are working with supporters in Congress to maintain the law and proceed with implementation.

Debate intensified in June 2003, when the House Appropriations Committee reported the FY2004 USDA appropriation with language prohibiting the use of funds to implement mandatory COOL for meats (but not for other covered commodities). A floor amendment to delete the prohibition was defeated, 208-193. In the Senate, the committee-reported appropriation (S. 1427) lacks the House language. (There is some debate over whether, despite such a funding ban, retailers would still have to comply with the law itself.)

Meanwhile, some Members of Congress are considering other changes to the COOL law. For example, a bill (H.R. 2270) was introduced to extend COOL provisions to poultry products and goat meat, and to permit animals born prior to October 1, 2004, to be exempt from coverage. Another bill (H.R. 3083) is intended to ease producer recordkeeping requirements, delete the current law's prohibition against a USDA-imposed mandatory animal identification system, and eliminate third-party audit provisions.

Hearings on COOL were held by a Senate Agriculture subcommittee on April 22, 2003, and by the full House Agriculture Committee on June 26, 2003. A House Agriculture subcommittee has scheduled another hearing for October 1, 2003.

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[9] USDA has in the past prohibited the importation of cattle and beef from any country with BSE, and no BSE cases have been found in the United States. For details see CRS Report RS20839, *Mad Cow Disease: Agriculture Issues*.